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9 UNITED STATES DISTRICT COURT
 10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 KYLE STEVEN SCOTT CATE,

15 Defendant.

Case No. 2:20-CR-108-RMP
 2:21-CR-051-RMP

United States Sentencing
 Memorandum

16 Plaintiff, United States of America, by and through Vanessa R. Waldref, United
 17 States Attorney for the Eastern District of Washington, and Richard R. Barker, Assistant
 18 United States Attorney, respectfully submits this sentencing memorandum. As set forth
 19 herein, the United States seeks a sentence of 112 months' incarceration, followed by 3
 20 years' supervised release. This recommendation is based on the below memorandum
 21 of points and authorities, the files and records in this case, and such further evidence
 22 and argument as the Court may permit.

23 **I. BACKGROUND AND GUIDELINES CALCULATIONS**

24 The relevant facts are set forth in the PSIR and the parties' Plea Agreement. In
 25 short, Defendant carjacked M.P. at gunpoint, threatening to kill M.P. in April 2020. ECF
 26 No. 57 at ¶11. Defendant then drove away in M.P.'s stolen car, leading police on a 23-
 27 mile-high speed chase – traveling at times at speeds greater than 100 miles per hour.
 28 *Id.* at ¶12. The gun, which bore Defendant's fingerprint, was found in Defendant's

1 flight path. *Id.* at ¶ 14. Significantly, Defendant left a lasting impact on M.P., pointing
2 the gun at M.P. and threatening his life. *Id.* at 16. All of this happened, while M.P.'s
3 son was sleeping in an adjacent room. *Id.*

4 Stepping back, Defendant not only unlawfully possessed the gun used in the
5 carjacking, he also was in possession of additional firearms that were taken during two
6 burglaries in Okanagan County in the summer of 2018, which was after Defendant
7 sustained a felony conviction. ECF No. 57 at ¶¶ 19-35. The evidence of his possession
8 is compelling, including Defendant's own admissions as well as witness statements
9 regarding Defendant's involvement in the theft of certain of these firearms from a local
10 pawn shop. *See id.*

11 Following the Plea Agreement, the United States Probation Office conducted its
12 own investigation and submitted a Presentence Investigation Report ("PSIR") to the
13 Court. *See* ECF No 57. For purposes of calculating the appropriate range under the
14 United States Sentencing Guidelines (the "Guidelines"), the United States agrees with
15 the Officer Lerch's calculations, as set forth in the draft PSIR. Specifically, the United
16 States agrees the total offense level is 28 with a criminal history category V, resulting
17 in an advisory sentencing range of 130-162 months. *Id.* at ¶221.

18 **II. VICTIM IMPACT & RESTITUTION**

19 United States Probation Officer Cassie Lerch's excellent Presentence
20 Investigation Report captures the impact of this terrible offense on M.P. As the PSIR
21 details:

22 M.P. recalled what he described as the most frightening night of his life.
23 He described how, in the middle of the night, he answered the door to find
24 the defendant, a stranger, who was paranoid and appeared to be on drugs,
25 demanding M.P. give him a "ride." After M.P. declined to do so, out of
26 fear the defendant would harm him, the defendant pulled out a firearm and
27 pointed it at M.P.'s face, just inches from his head, threatening to kill M.P.,
28 and then entered the home searching for keys. When the defendant started
heading in the direction of M.P.'s son's bedroom, M.P. feared for his son's
life and "gave up," and allowed the defendant to take his car keys and car.

1 ECF No. 57 at 37. M.P. detailed further “he has struggled with being able to even leave
2 his home, and fears going to the simplest places, such as a grocery store, or anywhere
3 in public.” *Id.* at ¶38. He has been laid off from his work and has not been employed
4 since May 2021.

5 M.P.’s vehicle, the one stolen from him during the carjacking, ultimately was a
6 total loss – i.e., after being driven for several miles at speeds over 100 miles per hour,
7 the engine gave out. At sentencing, the United States anticipates seeking restitution on
8 behalf of M.P. for the value of the 1998 Subaru Legacy.¹

9 III. UNITED STATES’ SENTENCING RECOMMENDATION

10 In light of the Plea Agreement, Guidelines, and factors set forth at 18 U.S.C.
11 § 3553, the United States respectfully recommends a sentence of 112 months’
12 incarceration consistent with the parties’ 11(c)(1)(C) Plea Agreement. The United
13 States further believes a three-year period of supervised release with the conditions
14 recommended by U.S. Probation is appropriate. It is the United States’ view that such
15 a sentence is appropriate, but no greater than necessary, to achieve the statutory goals
16 of sentencing. The government further requests that the Court order a \$200 mandatory
17 special penalty assessment.

18 1. The nature and circumstances of the offense

19 The circumstances of the offenses involve Defendant’s carjacking at gunpoint,
20 threats on M.P.’s life, and repeated possession of firearms, even though Defendant is a
21 convicted felon. The carjacking of M.P. with a sleeping child in the adjacent room was
22 a horrifying experience. Defendant came to M.P.’s home, unannounced and acting
23 strangely. He then demanded M.P.’s car and keys. Defendant took the car and led
24 police on a lengthy car chase. Based on his erratic behavior, Defendant is fortunate that
25 M.P. or someone else driving on the same highway as Defendant was not physically
26

27 ¹ The United States anticipates providing additional materials pertaining to the
28 valuation of the Subaru Legacy prior to sentencing.

1 injured. Yet, while M.P. may not have suffered a physical injury, this incident will
2 impact M.P. for the rest of his life.

3 2. History and characteristics of Defendant and Need to Protect the Public

4 Defendant's criminal history is concerning. He has convictions going back to
5 2008, and he has been incarcerated on a number of occasions. *See* ECF No. 57, ¶71.
6 He also has reoffended while on supervision. *Id.* at ¶73. While some of these convictions
7 are more innocuous – e.g., traffic violations – others are serious and demonstrate a
8 pattern of escalating dangerousness – e.g., trafficking in stolen property, obstructing
9 police, robbery, narcotics offenses, etc. *Id.* ¶¶ 74 – 102. To put these convictions in
10 context, Defendant's criminal record stems, at least in part, from mental health issues
11 and substance abuse. *Id.* at ¶¶ 175-80. Defendant has been using methamphetamine and
12 heroin since he was fifteen years old. *Id.* Though he has had opportunities to attend
13 drug treatment programs, he has not completed them. *Id.* at ¶ 180.

14 Based on the length of his criminal record, it is clear that brief stints of
15 incarceration have had little impact on Defendant's behavior or his pattern of turning to
16 illegal drugs. This history demonstrates that Defendant poses a danger to the community
17 and a significant period of incarceration is warranted. Additionally, Defendant was on
18 supervised release when he committed the offenses to which he has now pled guilty. *Id.*
19 at ¶ 104. Accordingly, he is a risk to the community, even when properly supervised.

20 3. The need to avoid unwarranted sentence disparity among defendants with
21 similar records who have been found guilty of similar conduct.

22 The best way to ensure consistent sentences for similarly-situated Defendants
23 across courtrooms, districts, and the country is for courts to apply the sentencing
24 Guidelines in the same manner everywhere. *See United States v. Saeteurn*, 504 F.3d
25 1175, 1181 (9th Cir. 2007); *United States v. Parker*, 462 F.3d 273, 277 (3d Cir. 2006);
26 *United States v. Boscarino*, 437 F.3d 634, 638 (7th Cir. 2006). The Guidelines are the
27 only normative way to accomplish that. In this case, a sentence close to the Guideline
28 range properly accounts for “the need to avoid unwarranted sentence disparities among

1 defendants with similar records who have been found guilty of similar conduct.” 18
2 U.S.C. § 3553(a)(6). Numerous courts have recognized that sentencing within the
3 Guidelines range serves as a bulwark against unwarranted sentencing disparity. *See*
4 *United States v. Guerrero-Velasquez*, 434 F.3d 1193, 1195 n.1 (9th Cir. 2006)
5 (recognizing that guidelines “help to maintain uniformity in sentencing throughout the
6 country”); *United States v. Hunt*, 459 F.3d 1180, 1184 (11th Cir. 2006) (“The
7 Guidelines . . . are an indispensable tool in helping courts achieve Congress’s mandate
8 to consider ‘the need to avoid unwarranted sentence disparities’ among similarly
9 situated defendants”) (quoting 18 U.S.C. § 3553(a)(6)); *United States v. Smith*, 445 F.3d
10 1, 7 (1st Cir. 2006) (noting that “the guideline range . . . is the principal means of
11 complying with” the goal of avoiding unwarranted sentencing disparity).

12 The Ninth Circuit has specifically observed that a sentence consistent with the
13 guideline range is unlikely to be disparate because such a sentence “represents the
14 sentence that most similarly situated defendants are likely to receive.” *United States v.*
15 *Becerril-Lopez*, 541 F.3d 881, 895 (9th Cir. 2008). Thus, mindful that the Guidelines
16 must be “the starting point and the initial benchmark,” *United States v. Carty*, 520 F.3d
17 984, 991–92 (9th Cir. 2008), the United States submits that a sentence of 112 months,
18 which is just slightly below the guidelines, will avoid an unwarranted sentencing
19 disparity and is appropriate in this case. A sentence of anything less, especially on these
20 facts, would be disproportionately low considering Defendant’s history and the harm
21 inflicted on his victim in this case. That said, a sentence of 112 months also takes into
22 account Defendant’s upbringing and the role of illegal drugs in this case.

23 GOVERNMENT’S SENTENCING RECOMMENDATION

24 The government recommends the Court impose a sentence of 112 months’
25 imprisonment and a three-year term of supervised release as reflected in the parties’
26 11(c)(1)(C) plea agreement. Although this is lengthy sentence, it actually is below the
27 guidelines range, as determined by U.S. Probation. Such a sentence is appropriate and
28 takes into consideration the relevant factors under 3553(a).

1 Respectfully submitted this 24 day of November, 2021.

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3 Vanessa R. Waldref
4 United States Attorney

5 s/ Richard R. Barker
6 Richard R. Barker
7 Assistant United States Attorney
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CERTIFICATION

I hereby certify that on November 24, 2021, I electronically filed the foregoing with the Clerk of the Court and counsel of record using the CM/ECF System.

s/Richard R. Barker

Richard R. Barker

Assistant United States Attorney